

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 10-247 V

Filed: September 26, 2011

Not for Publication

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JACK ORTEGREN, a minor, by and \*  
through his Parent and Natural \*  
Guardian, KIRK ORTEGREN, \*

Petitioner, \*

v. \*

SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

Lawrence G. Michel, Salina, KS, for petitioner.

Chrysovalantis P. Kefalas, Washington, DC, for respondent.

**MILLMAN, Special Master**

### DECISION AWARDING DAMAGES<sup>1</sup>

On September 22, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that his son, the vaccinee, suffered from transverse myelitis following hepatitis B ("Hep B"), diphtheria-tetanus-acellular pertussis ("DTaP"), inactivated polio ("IP"), pneumococcal conjugate ("PC") and rotavirus vaccines. Respondent denies that the vaccinee's transverse myelitis was caused in fact by his Hep B, DTaP, IP, PC, and rotavirus vaccines. Nonetheless, the parties agreed to resolve this matter informally.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

The court hereby adopts the parties' stipulation and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$7,033.63**, representing reimbursement of a State of Nebraska Medicaid lien, in the form of a check payable jointly to petitioner and

Third Party Recovery  
Division of Medicaid and Long-Term Care  
Department of Health and Human Services  
P.O. Box 95026  
Lincoln, NE 68509-5026  
Medicaid Claim No: 045716423-01  
Attn: Meg Domalakes

- b. A lump sum of **\$225,000.00**, in the form of a check payable to petitioner as guardian/conservator of Jack's estate.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Laura D. Millman  
Special Master

<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS



\_\_\_\_\_)  
JACK ORTEGREN, a minor, by and )  
through his parent and Natural Guardian, )  
KIRK ORTEGREN, )  
Petitioner, )  
v. ) No. 10-247V  
Special Master Millman )  
SECRETARY OF HEALTH AND HUMAN )  
SERVICES, )  
Respondent. )  
\_\_\_\_\_)

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of his son, Jack Ortegren ("Jack"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Jack's receipt of hepatitis B ("Hep-B"), diphtheria-tetanus-acellular pertussis ("DTaP"), inactivated polio ("IP"), pneumococcal conjugate ("PC"), and rotavirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"); 42 C.F.R. § 100.3 (a).
2. Jack received his Hep-B, DTaP, IP, PC, and rotavirus vaccines on April 20, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Jack sustained a vaccine-related injury diagnosed as transverse myelitis as a result of the Hep-B, DTaP, IP, PC, and rotavirus vaccines. He further alleges that Jack experienced the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages on behalf of Jack as a result of his condition.

6. Respondent denies that Jack's transverse myelitis or any other injury was caused-in-fact by the Hep-B, DTaP, IP, PC, and/or rotavirus vaccines and denies that his current disabilities are sequelae of his alleged injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. a lump sum of \$7,033.63, which amount represents reimbursement of a State of Nebraska Medical lien, in the form of a check payable jointly to petitioner and

Third Party Recovery  
Division of Medicaid and Long-Term Care  
Department of Health and Human Services  
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Medicaid Claim No.: 045716423-01  
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- b. a lump sum of \$225,000.00 in the form of a check payable to petitioner as guardian/conservator of Jack's estate. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. §300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before

the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Jack as contemplated by a strict construction of 42 U.S.C. §300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. Petitioner represents that he presently is or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Jack's estate under the laws of the State of Nebraska. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Jack's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Jack Ortegren at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Jack Ortegren

upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and as legal representative of Jack, on behalf of himself, Jack, and Jack's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Jack resulting from, or alleged to have resulted from the Hep-B, DTaP, IP, PC, and/or rotavirus vaccines administered on or about April 20, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about April 19, 2010, in the United States Court of Federal Claims as petition No. 10-247V.

15. If Jack should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except

as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Jack sustained a vaccine-related injury diagnosed as transverse myelitis or any other injury as a result of the Hep-B, DTaP, IP, PC, and/or rotavirus vaccines administered on or about April 20, 2007, and that his current disabilities are sequelae of his alleged injury.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Jack Ortegren.

END OF STIPULATION

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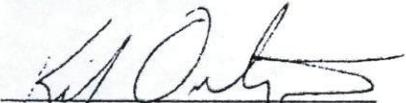
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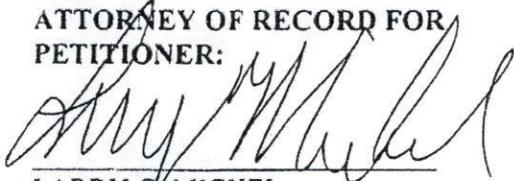
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Respectfully submitted,

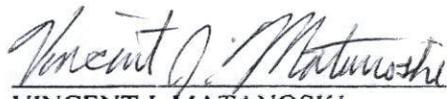
**PETITIONER:**

  
KIRK ORTEGREN

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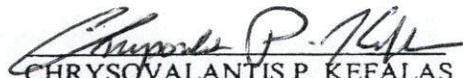
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Dated: 22 September 2011